

Docket No. H3294 PCT/US
Application Serial No. 09/869,171
PCT/EP99/09901

REMARKS

Claim 26 has been identified as being a substantial duplicate of claim 14. In the event that claim 14 is found to be allowable, claim 26 would therefore be objected to under 37 CFR 1.75. In order to obviate this ground of objection, claim 26 and the claims depending therefrom, 27-30, are hereby cancelled.

The Examiner regards the title of the application, as filed, as not being descriptive. Applicants concur with the use of the Examiner's suggested title of "A Method For Coloring Keratin Fibers" and have amended the specification accordingly.

Claims 14-16, 19, 21-24, 26-28 and 30 are rejected under 35 USC 102(b) as being anticipated by Moeller et al. Applicants respectfully traverse and request the withdrawal of this rejection in view of the following comments.

Moeller et al. disclose a process for coloring keratin fibers by applying to the fibers a composition comprising an isatin derivative. Further embodiments comprise the use of the isatin derivative compound in combination with additional compounds.

The present invention comprises a method for coloring keratin fibers comprising the use of a *combination* of a pyrimidine compound and keratin dyeing coupler compounds. One further embodiment comprises the possible addition of activated carbonyl compounds, exemplified as various isatin derivatives, to the combination of pyrimidine and coupler components. The essence of the present invention is the use of a combination of pyrimidine compounds and various coupler components to color keratin fibers. This is clearly distinguishable from the disclosure of Moeller et al., in which the essential element is the use of isatin derivative compounds either separately or in combination with other hair coloring components for the

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purpose of coloring keratin fibers.

It is well settled that, "...the anticipatory reference must disclose in the prior art a thing substantially identical with the claimed invention." *Akzo N.V. v. International Trade Commission*, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), citing *In re Arkley*, 172 USPQ 524, 526 (CCPA 1972). It may be argued that instant claim 21 comes closest to Moeller et al. because it includes a number of isatin compounds. However, the addition of an isatin compound to the pyrimidine/coupler combination of the presently claimed *method* for coloring keratin fibers is not the same as employing an isatin compound as the primary ingredient in a process for coloring keratin fibers. The reference cannot be utilized as a mere laundry list of ingredients. What must be considered is the reference's entire disclosure, which is a *method* for coloring keratin fibers using isatin derivatives plus other components. It should therefore be evident that Moeller et al. fail to anticipate Applicants' claimed *method* of coloring keratin fibers by use of a *combination* of a pyrimidine component and a coupler compound. At the very least, claims 14-20 are clearly not anticipated by this reference.

Claims 14-20 and 22-30 are rejected under 35 USC 103(a) as being obvious over Rose et al. Applicants respectfully traverse and request the withdrawal of this rejection in view of the following comments.

Rose et al. disclose the use of 1,4-diazacycloheptane derivatives as primary intermediates in an oxidative hair coloring process. Applicants' method for coloring keratin fibers comprises the use of pyrimidine derivatives in combination with specific coupler compounds.

In the oxidative process as taught by Rose et al. a chemical oxidizing agent must be used to achieve the desired goal. However, in contrast, Applicants' process avoids the use of harmful oxidizing agents, such as hydrogen peroxide, persulfates and chlorites. Applicants' process

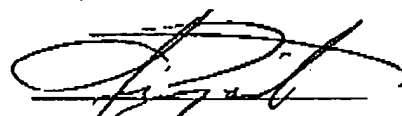
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utilizes atmospheric oxygen, instead. An enzyme containing system may also be used. However, even though Rose et al. disclose the possible use of enzymes in their oxidizing system, the primary purpose of these enzymes is to enhance the operation of chemical oxidizing agents, such agents being absent from Applicants' invention. When considered in its entirety, Rose et al. fail to disclose, teach or even suggest Applicants' method for coloring keratin fibers. Applicants respectfully submit that this reference therefore fails to render the instantly claimed invention obvious.

In view of the foregoing amendment and remarks, it is respectfully submitted that the claims herein present patentable subject matter. Accordingly, the issuance of a notice of allowability is earnestly solicited. The Honorable Director is authorized to charge any deficiency in the required fee or to credit any overpayment made in connection with this amendment to Deposit Account 01-1250.

Applicants also ask that the shortened statutory period to respond to the Office Action of July 17, 2003, be extended two month from October 17, 2003 to December 17, 2003. Please charge our Deposit Account No. 01-1250 in the amount of \$420.00 for the extension fee. Order No. 03-0530.

Respectfully Submitted,



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